

OPINION
46-9

April 17, 1946 (OPINION)

AERONAUTICS

RE: Public Service Commission Authority

This will acknowledge your letter of April 16, 1946, in which you say that the Northern Airways, Inc., of Grand Forks, North Dakota, has applied for a certificate of public convenience and necessity from the Public Service Commission to furnish common carrier passenger and express service by air within this state, consisting wholly of intrastate service. The hearing on this application has been set by the Public Service Commission for April 22, 1946, at its offices in the capitol.

You state that the committee of aeronautics after having considered this matter fully feels that this case, in other words, the application for certificate of public convenience and necessity made by the Northern Airways of Grand Forks, comes within its realm of authority rather than that of the Public service Commission. It is the claim of the committee of aeronautics that the jurisdiction to hear and determine the issues involved in this application is within the scope and authority of the committee of aeronautics and not within the jurisdiction of the Public Service Commission.

Your problem involves an interpretation of Chapter 38 of the 1945 Session Laws, creating the aeronautics division of the Public Service Commission, and whether or not there is a conflict between Chapter 38 of the 1945 Session Laws and the powers and authorities therein granted and the authority of the Public Service Commission. The Commission points to section 2-0307 of the North Dakota Revised Code of 1943, declaring:

Aircraft carrying passengers or property for hire shall be deemed common carriers and shall be subject to all of the rules applicable thereto," as the basis for its contention.

Common carriers and their regulation come within the jurisdiction, generally speaking, of the Public Service Commission under the terms of the statutes set forth in Title 49 of the North Dakota Revised Code of 1943.

Chapter 38 of the 1945 Session Laws is a comprehensive statute. Section 1 of said chapter provides:

It is hereby declared to be the public policy of this state that the promotion and development of aeronautics, air commerce and a state system of airways and airports is affected with a public interest; --."

Section 2 of said chapter, in part, provides:

There is hereby created a division of aeronautics within the Public service Commission; that the powers, duties and

functions of said division of aeronautics shall be administered by a committee of aeronautics consisting of five members who shall be appointed by the Governor, not more than one of whom shall always be a member of the Public Service Commission. --"

Then this section goes on to designate who shall be appointed and from what portions of the state such appointees shall come and to prescribe the term of office for each member of the committee.

The powers and duties of the committee of aeronautics are sweeping and broad and are set forth in section 3 of said Act.

By way of a specific answer to the question set forth in your letter, I quote from section 3 of Chapter 38 of the 1945 Session Laws:

The committee of aeronautics shall have, and is hereby vested, with full and complete power, authority and supervision over the promotion and development of aeronautics, air commerce, and a state system of airways and airports:"

Subsection 1 under section 3 reads:

To designate, design and plan a state airway and airport system which will best serve the interests of the state;"

Subsection 2 of said section reads:

To coordinate such state airway and airport system which will best serve the interests of the state;"

Subsection 6 of said section states:

To institute or participate in investigations and hearings pertaining to the promotion and development of aeronautics, air commerce, and the establishment of a system of airways and airports in this state; --."

Other powers and duties are enumerated in said section 3 of chapter 38.

While it is true that the Public Service Commission has general supervision and regulatory powers over common carriers, and aircraft has been declared by section 2-0307 of the North Dakota Revised Code of 1943 to be a common carrier, it was undoubtedly the intention of the legislature when it enacted Chapter 38 of the 1945 Session Laws to delegate to the committee of aeronautics the right to regulate air commerce within the state of North Dakota, and to coordinate such regulation with federal and interstate air services. Air commerce is a coming industry. Its development in the next few years will be rapid and extensive. The legislature undoubtedly felt that the regulation, designing, and planning of state airway and airport systems to serve the best interests of the state should be in the hands of men skilled in the use of aircraft and who had had experience in the use thereof and were conversant with the use of all types of aircraft. To that end, the legislature provided enabling legislation creating a division of aeronautics within the Public service Commission, specifying its powers in section 3 of chapter 38,

without any indication that such committee was to share any of its powers with the Public Service Commission as such, but rather indicating that the powers of the committee should be autonomous.

There is no indication in Chapter 38 of the 1945 Session Laws that the Public Service Commission is to exercise any part or portion of the powers granted to the committee of aeronautics, although it appears that it is a division of the Public Service Commission and one of the members of the Public Service Commission is a member of the committee. It was probably the intention of the legislature that the committee and the Public Service Commission, which deals with all kinds of business coupled with a public interest, should function as related agencies of the state, each within its own sphere. But outside of that fact, there is nothing to indicate that the Public Service Commission may exercise any of the functions granted to the committee of aeronautics. It would seem reasonable that the power of the committee to designate, design, and plan a state airway and airport system should include, and does include, the power to hear and determine applications for certificates of public convenience and necessity by private organizations intending to engage in aircraft service of transporting persons and property in the state of North Dakota. It is hardly conceivable that the committee could intelligently designate, design, and plan a state airway and airport system without having jurisdiction to determine what organizations should have the right to operate an airway system, or systems, within the state. Nor does it seem reasonable that the committee could properly coordinate a state airway system, or systems, in aid of and to supplement air commerce with the federal or interstate air services without having jurisdiction over the granting of certificates of public convenience and necessity to aircraft carriers intending to engage as common carriers, in furnishing passenger and property transportation with the state of North Dakota. Furthermore, under the powers and duties of the committee of aeronautics, the statute specifically states that the committee shall have the power, and that it is its duty, to institute or participate in investigations and hearings pertaining to the promotion and development of aeronautics, air commerce, and the establishment of a system of airways and airports of this state. The legislature must have had in mind when it designated this as one of the duties of the committee the hearings and investigations that must be made in order to determine when an aircraft organization should have the right to engage in common carrier service, and as such, acquire a certificate of public convenience and necessity. Furthermore, it is evident that the committee of aeronautics is by reason of its make-up and experience more apt to have in mind the various factors involved in the granting of such right as a certificate of public convenience and necessity than the Public Service Commission whose duties are diverse and many and whose membership is not specially trained in dealing with air commerce. The granting of a certificate of public convenience and necessity involves the planning, designing, and development of air commerce. While carrying passengers and property by aircraft has been designated by statute as a common carrier service, there is no reason to believe that that in any way conflicts with the powers and duties of the committee of aeronautics. In fact, the pronouncement of our legislature that the carriage of passengers and property by aircraft constitutes common carrier service is in no way indicative of the fact that the Public Service Commission has

jurisdiction over the granting of certificates of public convenience and necessity rather than the committee of aeronautics.

It would seem strange or very unlikely that the legislature would enact an elaborate statute dealing with aeronautics and then deprive the very committee designated by law to design and plan a state airway and airport system of one of the main functions which enables it to intelligently design and plan a coordinated system of air commerce within the state. It appears to us that Chapter 38 of the 1945 Session Laws was intended to, and does, give jurisdiction to the committee of aeronautics over the granting of certificates of public convenience and necessity to aircraft carriers as a function which is necessary to enable it to properly design and plan a state airway system, and that it is specifically charged with making investigations and holding hearings pertaining to the development of aeronautics and air commerce. Certainly, the issuance of a certificate of public convenience and necessity constitutes one of such functions.

If it should be deemed that there is any conflict between the statutes existing prior to the enactment of Chapter 38 of the 1945 Session Laws, insofar as it may conflict with them, Chapter 38 of the 1945 Session Laws would supersede the prior statutes. This is a complete statute.

It must be borne in mind that Chapter 38 of the 1945 Session Laws is a special statute, dealing with a special subject to-wit: The promotion and development of aeronautics, air commerce, and a state system of airways and airports. This statute, therefore, must be considered separate and apart from the general statutes dealing with the powers of the Public Service Commission relative to the regulation of common carriers. It is a fundamental principle of law that where a special statute deals with a subject it prevails over a general statute. Chapter 38 of the 1945 Session Laws is the latest enactment of the legislature dealing with aeronautics, its promotion and development, air commerce, and a state system of airways and airports.

It is the opinion of this office that the jurisdiction to hear all applications involving the request of any aircraft organization for a certificate of public convenience and necessity is in the committee of aeronautics, consisting of four appointees by the governor, and one member of the Public Service Commission. And it is further our opinion that the jurisdiction to hear and determine all applications for certificates of public convenience and necessity by any organization seeking to exercise the rights of a common carrier by aircraft within the state of North Dakota, either of persons or property, should and logically rests, in the committee of aeronautics who are specialists in their particular field, and that it was the undoubted intention of the legislature when it enacted Chapter 38 of the 1945 Session Laws, and particularly as evidenced by the sweeping powers granted to such committee, set forth in section 3 of said chapter, that it exercise the function which would enable it to properly and intelligently design, plan, promote, develop, and establish systems of transportation of persons and property by air commerce within our state.

It is further our opinion that the committee of aeronautics should hereafter hear and determine all applications for certificates of public convenience and necessity to furnish common carrier and express service by air, and that the Public Service Commission should yield to the desires of the committee of aeronautics and allow it to hear and determine the application set for hearing on April 22, 1946.

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